

1 MELINDA HAAG (CABN 132612)
United States Attorney

2 DAVID R. CALLAWAY (CABN 121782)
3 Chief, Criminal Division

4 LAURIE K. GRAY (MNBN 0153618)
KIMBERLY HOPKINS (MABN 668608)
5 ANDREW M. SCOBLE (CABN 124940)

6 Assistant United States Attorneys

7 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
8 Telephone: (415) 436-6557/6991/7249
Fax: (415) 436-7234
9 Laurie.Kloster.Gray@usdoj.gov
Kimberly.Hopkins@usdoj.gov
10 Andrew.Scoble@usdoj.gov

11 Attorneys for the United States of America

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 UNITED STATES OF AMERICA,) No. CR 14-0120-EMC
)
18 Plaintiff,) UNITED STATES' AMENDED SENTENCING
) MEMORANDUM
19 v.)
) Hrg.: July 21, 2015
20 ALBERTO TORRES,) Time: 10:00 a.m.
) Courtroom: Five (17th Floor)
21 Defendant.)
)

22
23 The government files this Amended Sentencing Memorandum to replace the earlier-filed
24 memorandum with respect to defendant Alberto Torres, which contained an incorrect advisory
25 guidelines range that failed to take account of U.S.S.G. § 4B1.1(c)(2)(A). The government apologizes
26 for this inconvenience. The error does not in any way affect the government's recommendation or the
27 reasons for it. The government stands by the parties' jointly recommended, binding sentence of 168
28 months' imprisonment.

1 The government files this Sentencing Memorandum in anticipation of the July 21, 2015
2 sentencing of defendant Alberto Torres. The defendant has pleaded guilty to five counts of the
3 superseding indictment, pursuant to a binding plea agreement under Federal Rule of Criminal Procedure
4 11(c)(1)(C). The binding plea agreement is part of a linked “package” resolution involving eight other
5 defendants in the case. As the parties memorialized in their written plea agreement (at Paragraph 8), a
6 key consideration for the government is the resolution of one entire trial group and part of a second trial
7 group, with the resulting delayed disclosure of sensitive identifying information for cooperators, victims
8 and civilian witnesses.

9 The government has no objections to the Presentence Report (“PSR”). This includes the
10 guidelines calculations pertaining to Counts 8 and 9 (Assault with a Dangerous Weapon), as to which
11 the written plea agreement omitted the increases under U.S.S.G. § 2A2.2(b). The resulting total offense
12 level, however, remains unaffected, pursuant to the Career Offender guidelines (*see* Plea Agreement
13 Para. 7). With the reduction in CHC recommended by the PSR (down to CHC V), the government
14 believes that the resulting advisory guidelines range (V, 34) is 295-353 (in light of U.S.S.G.
15 § 4B1.1(c)(2)(A)). Nonetheless, the government firmly believes that a sentence of 168 months’
16 imprisonment is fair and appropriate for this defendant, and is no greater than necessary to achieve the
17 ends of justice in this case.

18 Although the PSR and the parties’ written agreement take a different path, both arrive at the
19 same sentencing recommendation – 168 months’ imprisonment. The sentence set forth in the binding
20 plea agreement represents the culmination of protracted negotiation and deliberation, including an effort
21 to arrive at a sentence for this defendant which both reflects his individual sentencing factors under 18
22 U.S.C. § 3553(a) and avoids unwarranted sentencing disparity with the other eight codefendants who are
23 resolving their cases simultaneously. The government will not repeat the various competing
24 considerations which are discussed at length in the extremely thorough and thoughtful PSR – including
25 the need for deterrence and protection of the community from violence acts that continued until close to
26 the defendant’s arrest. The government believes that a proper balancing of the various circumstances in
27 aggravation and mitigation supports the parties’ joint, binding recommendation of a sentence of 168
28 months’ imprisonment. The proposed sentence is not greater than necessary to achieve the ends of

1 justice in this case. It also preserves proportionality with the sentences as proposed for the other
2 defendants, including the proposed sentence of 132 months for codefendant Michael Viera (who has
3 entered guilty pleas to the same counts as the instant defendant, but whose known criminal history is
4 less).

5 For all of those reasons, and pursuant to the written Plea Agreement, the government respectfully
6 requests that the Court sentence Alberto Torres to a total sentence of 168 months, as set forth in the
7 PSR's Sentencing Recommendation; a total term of five years of supervised release (with all the terms
8 and conditions set forth in the PSR); no criminal fine (based upon a finding of inability to pay a criminal
9 fine); and a \$500 special assessment. The conditions of supervised release
10 should include the following expanded search condition, to which the defendant agreed (*see* Plea
11 Agreement Para. 10):

12 The defendant shall submit his person, residence, office, vehicle, or any
13 property under his control to search. Such a search shall be conducted by
14 a United States Probation Officer or any federal, state, or local law
15 enforcement officer at any time with or without suspicion. Failure to
16 submit to such a search may be grounds for revocation; the defendant shall
17 warn any residents that the premises may be subject to searches.

18 At sentencing, the government will move to dismiss Count Two of the pending superseding
19 indictment.

20 DATED: July 14, 2015

MELINDA HAAG
United States Attorney

/s/

21 By: _____
22 LAURIE K. GRAY
23 KIMBERLY HOPKINS
24 ANDREW M. SCOBLE
25 Assistant United States Attorneys
26
27
28